IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL NOs : 171 & 185 of 2000

WRIT APPEAL NO : 171 of 2000

Writ Appeal under Clause 15 of the Letters Patent against the Order dated 28/12/1999 in WP NO : 5592 OF 1992 on the file of the High Court.

Between:

M.V.Suba Rao Bonasu Vari Street, Samalkot, E.G.District.

..... APPELLANT

AND

1. Deccan Sugars, A Division of Nava Bharat Ferro Alloys, Ltd., Samalkot, E.G.District, Rep. By its Plant Manager Sri R. Nanda Kumarl.
2. Industrial Tribunal-cum-Labour Court, Visakhapatnam.

.....RESPONDENTS

Counsel for the Appellant:MR.V.V.L.N.Sarma.

Counsel for the Respondent No.1 : Mr. Krishna Mohan Rao.

Counsel for the Respondent No.2 : G.P. for Labour.

WRIT APPEAL NO : 185 of 2000

Writ Appeal under Clause 15 of the Letters Patent against the Order dated 28/12/1999 in WP NO : 5592 OF 1992 on the file of the High Court.

Between

Deccan Sugars, A Division of Nava Bharat Ferro Alloys, Ltd., Samalkot, E.G.District, Rep. By its Plant Manager Sri R. Nanda Kumar.

…..Appellant

AND

1. Industrial Tribunal-cum-Labour Court, Visakhapatnam.
2. M.V.Subba Rao Bonasu Vari Street, Samalkot E.G.Dist.

….Respondents

Counsel for the Appellant: Mr. Krishna Mohan Rao.
Counsel for the Respondent No.1 : G.P. for Labour.
Counsel for the Respondent No.2 : V.V.L.N.Sarma.

The Court made the following :

THE HON'BLE SRI JUSTICE J. CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

W.A.Nos.171, and 185 of 2000

Common Judgment: (Per Sri GHULAM MOHAMMED, J)

These Writ Appeals have been directed against the order passed in Writ Petition Nos.5592 of 1992 by the learned single Judge of this court. The above writ petition has been filed by the

Management- Deccan Sugars, challenging the Award passed by the Labour Court in I.D.Nos.37 of 1990 dated 7.1.1992.

Since the issues involved in these writ appeals are interconnected, they are heard together and are being disposed of by this common order. The parties shall be referred to as they were arrayed in the writ petition.

As stated above, Writ Petition No.5592 of 1992 has been preferred by the management challenging the Award passed by the Labour Court wherein the Labour Court while confirming the findings of the management that the respondent-workman was guilty of mis-conduct enumerated in the company's Standing Orders, however granted the relief of reinstatement of the workman without backwages and without continuity of service. The learned single Judge of this court considering the rival submissions of both the parties, modified the Award and granted compensation of Rs.20,000/- in lieu of the Award of reinstatement granted by the Labour Court.

Being aggrieved by the order of the learned single Judge, the writ petitioner-management preferred Writ Appeal No.185 of 2000. The respondent-workman also preferred Writ Appeal No.171 of 2000 challenging the judgment of the single Judge on various grounds.

In the instant case, the respondent-workman was a seasonal clerk. While so, he was issued with the charge sheet with the following charges.

> "1) You have made two false entries unauthorisedly in the weighment day book in the third shift on 11.2.89, after sending bradma clerk to gave unlawfully and to cause loss to the factory.
>
> 2) You are in collusion with the security guard, P. Adinarayana, who is posted at ash gate, had torn off two counter foils from the gate pass serial number book bearing Sl.Nos.39 and 40 for the aforesaid shift and altered the serial number of the vehicles in the said pass book and struck off the entries in the weighment day book, in order to screen your unlawfully act by destroying the evidence.

The above said acts constituted mis-conduct under Rule 21(v), (xxiv), and (xxvii) of the Company's Standing Orders.

Thereafter, an enquiry was held by the management and the Enquiry Officer found the workman guilty of the charges. Considering the report of the Enquiry Officer, the management imposed punishment of dismissal from service.

Challenging the same, the workman preferred Industrial Dispute before the Labour Court. The Labour Court on appreciation of the material on record, though came to the conclusion that the workman was guilty of mis-conduct for attempting to cause wrongful loss to the company by committing fraud on the companies business and was guilty of mis-conduct for the offences punishable under the Indian Penal Code, however, granted the relief of reinstatement without backwages and without continuity of service on the ground that conspiracy could not have been done by the respondent-workman alone.

Challenging the said Award passed by the Labour Court, the management preferred the Writ Petition No.5592 of 1992 before this court, inter alia contending that since the respondent-workman having been found guilty of the charges framed against him, the Labour Court ought not to have granted the relief of reinstatement of service.

The learned single Judge considering the rival contentions of both the parties, the gravity of the charges relating to collusion with other employees with a view to cause loss to the management and also the parameters of section 11-A of the Industrial Disputes Act, held that when once charges are proved and the charge relate to financial impropriety or involvement for causing loss to the company, the Labour Court should view the matter from the pint of view of loss of confidence, and modified the Award granting compensation of Rs.20,000/- to the workman in lieu of reinstatement without backwages and without continuity of service.

Sri M. Krishna Mohan Rao, learned counsel appearing for the appellant-management vehemently contended that the Labour Court as well as the learned single Judge have found that the domestic enquiry has been conducted properly and charges were also proved against the delinquent, and in view of the gravity of charges the Labour Court erred in directing reinstatement of the respondent-workman, and that the learned single Judge also while confirming the findings of guilt of the workman, ought not to have awarded compensation in lieu of reinstatement order passed by the Labour Court. In support of his contentions, he relied upon the following decisions:

REGIONAL MANAGER, RAJASTAN SRTC v. SOHAN LAL (1) 2004 (8) SCC 218), JANATHA BAZAR v. SECRETARY ((2) 2000 (7) SCC 517), U.P. STATE ROAD TRANSPORT CORPN v. SUBHASH CHANDRA SHARMA (((3) 2000 (3) SCC 324), U.P. STATE ROAD TRANSPORT CORPN v. BASUDEO CHAUDHARY ((4) 1997 (11) SCC 370), DAIRY DEVELOPMENT CORPN LTD. v. KALA SINGH ((5) AIR 1997 SC 2661), RUSTON & HORNSBY (I) LTD v. T.B. KADAM ((6) AIR 1975 SC 2025), P. MAHESHWAR RAO v. PRESIDING OFFICER ((7) 1997 (1) ALT 326), DIVISIONAL MANAGER, APSRTC v. E. RAGA REDDY ((8) 1999 (5) ALT 450), DEPOT MANAGER v. APSRTC v. RAJAIAH ((9) 1999 (5) ALT 636).

On the other hand Sri V.V.L.N. Sharma, learned counsel appearing for the workman-appellant contended that issue of loss of confidence was not raised before the Labour Court and as such a question of fact cannot be raised now. He also contended that the award passed by the Labour Court is just and proper and needs no interference by this court. In support of his contentions he relied upon various decisions of the High Courts reported in WORKMEN, KUMALI v. LABOUR COURT, ERNAKULAM ((10) 1989 LAB. I.C. 1084), PB. AGRO INDUSRIES CORPORATION v. PRESIDING OFFICER ((11) 1990 (2) SLR 493), DEPOT MANAGER, APSRTC v. Md. MASOOD ((12) 1992 LAB. I.C. 1354), MANAGING PARTNER, BHARAT HOTEL v. THEIR WORKMEN ((13) 1994 LAB. I.C. 380), CORK

INDUSTRIES, MADRAS v. I. ADDL. LABOUR COURT AND OTHERS ((14) 1992 I L.L.J. 384), CHAIRMAN, KUL CHANDRA GRAM SEVA SAHKARI SAMITI LTD v. JUDGE, LABOUR COURT, BIKANER AND ANOTHER ((15) 1999 LLR 1058), EXECUTIVE ENGINEER, ELECTRICITY STORE DIVISION AND ANOTHER v. P.O., LABOUR COURT, GORAKHPUR AND OTHERS ((16) 1998 III-LLJ (Supp.) 46), TATA IRON STEEL CO. LTD v. LABOUR COURT JAMSHEDPUR AND ANOTHER ((17) 1996 II-LLJ 874), B.M. UGALE v. M/s. RAMILLA ENTERPRISES AND OTHERS ((18) 1995 LLR 627), S.S. SAMITI BASANTPUR LTD v. P.O. LABOUR COURT ANOTHER ((19) 1993 II-LLJ 468), HIND MAZDOOR SABHA AND ANOTHER v. STATE OF U.P. AND OTHERS ((20) 1999 LLR 47), MANAGEMENT OF TAFE v. R. VENKATRAMAN AND OTHERS ((21) 1990 II-LLJ 468) and also decisions of the Supreme Court reported in JITENDRA SINGH v. SHRI BAIDYANATH AYURVED BHAWAN LTD ((22) AIR 1984 SUPREME COURT 976), P.C. BUMOTRA v. THE CHAIRMAN-CUM-MANAGING DIRECTOR, NEW INDIA ASSURANCE CO. AND ANOTHER ((23) 1992 LLR 416), WORKMEN OF HINDUSTAN LEVEL LTD v. HINDUSTAN LEVER LTD AND OTHERS ((24) 1999 LLR 209).

In SOHAN LAL' s case (supra), the respondent therein who was appointed as bus conductor in the appellant-Corporation had not issued tickets to the passengers, leading not only monetory loss to the Corporation but also to loss of confidence in the employee. Considering those situations the Apex Court held that :

> " We notice from the finding of the Industrial Tribunal that the respondent-workman had indulged in misconduct which has not only led to monetary loss to the Corporation but the Corporation has also lost confidence in the said workman. Therefore, to continue such an employee in the employment of the Corporation by virtue of a judicial order, in our opinion, is an act of misplaced sympathy which can find no foundation in law or in equity. The finding that the workman has committed the misconduct in question of not issuing tickets to passengers is a finding of fact arrived at by the Tribunal after taking into consideration the evidence recorded therein. This finding was affirmed by the

> learned single judge and the High Court has not set aside the finding. Therefore, the question of moulding the relief on the facts of this case did not arise at all. The offer of the respondent to forego the back wages in lieu of his being reinstated is not an offer to be taken into consideration by the court unless and until the finding of the Tribunal on misconduct was set aside and having perused the records including the order of the tribunal, we are satisfied that this is not one of those cases in which there was room for setting aside such a finding.

It was also categorically held by the Apex Court that as follows :

> "Assuming for argument sake that the High Court by the impugned order proceeded on the basis that though the misconduct is proved the punishment was disproportionate and it is on that basis that the impugned order is made, even then we are unable to agree with the order of the appellate bench of the High Court because it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless the said sentence is wholly disproportionate to the misconduct proved. No such finding has been recorded by the appellate bench in the impugned order. Since the misconduct proved is one of dishonesty, the quantum of loss is immaterial, it is the loss of confidence that matters. In such a situation if the Tribunal chooses to uphold the order of dismissal and refuse to interfere with such termination and the learned single judge of the High Court agreed with the said order of the Tribunal, then appellate bench ought not to have interfered with the quantum of sentence."

In JANATA BAZAR's case (2 supra), the appellant co-operative society therein charged four of its employees with breach of trust and misappropriation. After holding a domestic enquiry all the four employees were dismissed and in a reference under section 10 of the Industrial Disputes Act, the Labour Court found the charges to have been clearly established. However, in view of past clean record

of the delinquents, the Labour Court, in exercise of its discretionary power under section 11-A of the Act, ordered their reinstatement with 25% of backwages. The Award of the Labour Court was upheld by the High Court. Challenging the same, the appellant-Corporation carried the matter to the Supreme Court. The Supreme Court considering those situations, while allowing the appeals held as follows :

> " After finding that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% backwages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service." (emphasis supplied)

In SUBHASH CHANDRA SHARMA's case (3 supra), the charge against the delinquent-respondent therein was that in a drunken state, along with the Conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. Considering those circumstances, the Apex Court held as follows :

> " .....It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of the respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved

against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in a miscarriage of justice."

In BASUDEO CHAUDHARY's case (4 supra), the petitioner therein had tried to fabricate the record regarding recovery of fare to show that the passengers had traveled for a lesser distance from Khalilabad to Gorakhpur although they had actually traveled from Basti to Gorakhpur. Considering those situations, the Supreme Court held that, " the misconduct that was found established was serious in nature and the Labour Court has rightly upheld the punishment of removal from service that was imposed on the petitioner. The High Court was in error in interfering with the award of the Labour Court and in substituting the penalty of censure for removal from service on the view that there was only an attempt to cause loss of Rs.65 to the Corporation and the action of the Corporation terminating the services of the petitioner was not justified."

In KALA SINGH's case (5 supra), the Supreme Court while considering the power of the Labour Court under section 11-A of the Industrial Disputes Act, held as follows :

"It is seen that the Labour Court after adduction of evidence came to the conclusion that the dismissal is justifiable. On the basis of the evidence adduced before it, no doubt, the Labour has not elaborately considered the entire evidence but, agreed to the decision that the misconduct has been proved. In view of the proof of misconduct, the necessary consequence would be that the Management has lost the confidence that the appellant would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under section 11-A to grant relief of reinstatement with minor penalty."

In T.B. KADAM's case (supra), the respondent therein was a

watchman, and the charge against him was one of attempt to steal company' property. The Supreme Court, inter alia, observed that workman being watchman, the charge was serious one and if held proved he deserves nothing short of dismissal.

In E. RAGA REDDY's case (supra), considering the provisions of section 11-A of the Industrial Disputes Act, it was held by a learned single Judge of this court that the power of the Labour Court/Industrial Tribunal to set aside an order of dismissal from service and directing reinstatement of a workman or awarding of lesser punishment shall not be exercised arbitrarily and that the Labour Court/Tribunal shall record specific findings in case of interference with quantum of punishment. In P.MAHESHWAR RAO's case (Supra) it was held that in determining the quantum of punishment what is relevant is the act of misappropriation and not the quantum of amount misappropriated.

Obviously, the respondent-workman did not dispute the procedure followed in the domestic enquiry, but he only disputed the appreciation of available evidence by the Enquiry Officer contending that the punishment of dismissal was severe. The Labour Court on re-appreciation of the evidence came to a categorical conclusion that the respondent-workman was guilty of mis-conduct. The Labour Court however, opined that mis-conduct could not have been committed by the employee solely and it is a conspiracy from among number of workers, therefore granted the relief of reinstatement without backwages and without continuity of service.

Though the management has not raised the issue of loss of confidence before the Labour Court, the learned single Judge while adverting to said aspect held as follows:

> " I have given serious consideration to the respective contentions. It is no doubt true that the contention was not specifically raised but the charge itself discloses that a collusion with the security guard in order to cause loss to the company, may not be that

> actual loss was not sustained by the company, but the purport of the charge itself is that the confidence which was reposed in the employee cannot be continued in view of the charges being proved. In such an event, it is open for the Labour Court to mould the relief keeping in view the nature of charges framed against the workman and the findings of the Enquiry Officer. Even though it is not raised specifically, yet it is a case where the Labour Court ought to have viewed the matter in the light of the principles of loss of confidence, more especially, when it is a case of collusion and preparing the documents in anticipation of destroying the evidence being a mis-conduct under the relevant clauses of the Standing Orders. When once charges are proved and the charge relate to the financial impropriety or involvement for causing loss to the company, the Labour Courts normally should view the matter from the point of view of the loss of confidence."

On perusal of the entire material on record, in our view, the reason given by the Labour Court, while exercising its discretion under Section 11-A of the Act and directing the reinstatement of the workman without backwages and without continuity of service, instead of dismissal from service, is that there were probably other persons apart from the respondent-workman involved in the conspiracy, and the same is not a ground at all to show leniency to the respondent-workman, when the charge against the delinquent-respondent stood proved. The fact remains that the Labour Court confirmed the findings of the management that the workman was guilty of mis-conduct enumerated in the company's Standing Orders in Clauses 21(v), (xxiv) and (xxvii) of the Certified Standing Orders of the Company. So also, the learned single Judge, on consideration of the material on record, while concurring with the findings of guilt of the respondent-workman held that "when once the charges are proved and the charges relate to the financial impropriety or involvement for

causing loss to the company, the Labour Court normally should view the matter from the point of view of the loss of confidence". When the management lost confidence in the respondent-workman, to continue such workman in the employment of the company or awarding compensation to the workman, by virtue of a judicial order, is an act of uncalled for sympathy. In our considered view, the learned single Judge having came to such a right conclusion, ought not to have awarded compensation in lieu of order of reinstatement passed by the Labour Court. In the circumstances, the decisions relied on by the learned counsel for the respondent-workman have no application to the facts of the present case.

In the circumstances, when the management lost the confidence, and the employee has been found to indulge in acts of dishonesty and intended to cause loss to the employer, in those circumstances, a proved case of loss of confidence does not call for any sympathy, and therefore it cannot be said that the penalty of dismissal from service is disproportionate to the gravity of proved charges.

This being the position, we are of the view that either granting of relief of reinstatement into service, without backwages and without continuity of service, or the relief of compensation of Rs.20,000/- in lieu of the reinstatement are not justified. Accordingly, the Award passed by the Labour Court and the order passed by the learned single Judge are set aside, by sustaining the order of dismissal passed by the management.

In the result, the Writ Appeal No.185 of 2000 preferred by the management is allowed by dismissing the Writ Appeal No.171 of 2000 preferred by the respondent-workman. Consequently, the Writ Petition No.5592 of 1992 stands allowed. No costs.

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JC, J

GM, J

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To

1. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam.
2. Two CCs to the G.P. for Labour, High Court of A.P., Hyderabade (OUT).
3. Two CD copies.

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